Hiring in Italy: Overview

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A Practice Note considering the legal obligations and practical implications that a foreign employer needs to be aware of when hiring a local employee in Italy. It also considers any legal risks involved in the recruitment process and the steps that an employer should take to avoid them.

Post-Employment Requirements

Foreign employers can limit their exposure to potential compliance breaches and employment claims through careful adherence to local laws when recruiting a new employee in a different jurisdiction. This Note details the requirements that a foreign employer must fulfil when it decides to recruit a new employee in Italy, including:

- The options for how a new employee can be hired by a foreign employer in Italy.
- Any pre- or post-employment registration requirements.
- The main labour laws and regulations that a foreign employer should be aware of and those that are specifically relevant to recruitment of local employees.
- The law relating to background checks in Italy.
- The obligations on a foreign employer when a new employee starts employment in Italy.
- The local requirements in relation to pay, tax, social security, and benefits.
- Any obligations in relation to time recording and training employees.

Options for Foreign Entity

Foreign Employer

In Italy it is possible for a foreign company to hire Italian workers, EU citizens, or individuals from a third country without establishing an office in the country, as long as the individuals have valid residence permits to work in Italy.

However, foreign companies must comply with administrative, social security, and insurance obligations required by Italian law for the establishment and management of employment relationships.

Foreign employers who do not have a permanent establishment in Italy and need to hire an employee to work in Italy must fulfil certain requirements (see *Registration as Employer*).

Employer Setting Up a Local Entity

If a foreign employer decides to set up a local entity in Italy, it can either establish a:

- Representative Office.
- Permanent business organisation (such as a branch or corporate structure).

A representative office has purely and exclusively promotional functions and which mainly take the form of preparatory activities for the subsequent opening of a secondary office or branch in Italy.

A representative office cannot carry out any commercial or production activities or produce any income in Italy, so it is not subject to any taxation in Italy. It is not considered a VAT taxable person. The representative office is not obliged to keep company books, or to prepare or file financial statements or tax and VAT returns.

A representative office allows a foreign company to operate in Italy without having to establish a branch or set up a corporate structure. Corporate structures (for example, the Limited Liability Company (*società a responsabilità limitata* or S.R.L) and the Joint-Stock Company (*società per azioni or S.p.A.*)) are the two most common types of companies and signify the permanent establishment of the foreign company in Italy and tend to have more complex footprints.

A foreign company may decide to establish its own branch office in Italy. To do this, the foreign company must engage an Italian Notary to draw up and deposit (with the Companies Register) all necessary documents along with the address of the branch office and details of the legal representative in Italy who has been specifically appointed for the project and their specific legal powers set out.

From a tax perspective, a branch office in Italy is considered a permanent establishment and must fulfil all accounting, civil, legal, and tax obligations associated with an Italian company. This legal entity also operates as a withholding tax agent for workers hired in Italy.

Permanent Establishment

Foreign companies which become permanently established in Italy become tax withholding agents and can withhold tax and related payments owed by an employee from their salary (Article 23, paragraph 1, Presidential Decree no 600/1973).

Permanent establishment is defined as a fixed place of business through which the non-resident company carries out its activity in whole or in part in the territory (Article 162, Presidential Decree no. 917/1986).

A company is deemed to have a permanent establishment in Italy when it has a:

- Management office.
- Business branch.
- Physical office, workshop, or laboratory.
- Mine, an oil or natural gas field, a quarry, or other place of extraction of natural resources.
- Significant and continuous economic presence there even if it is structured in such a way that it appears to have no physical, administrative, or directive presence there (for example if an individual is hired in Italy with the sole and specific responsibility of concluding contracts for their foreign company employer).
- Construction site or supervises activities connected to a construction site which lasts more than three months.

The position of a person who carries out their work in Italy on behalf of a non-resident company and habitually concludes contracts in the name of the company will also be relevant unless the individual carries out these activities as an independent agent. If the individual is not classed as an individual agent, the foreign company will be considered permanently established in Italy.

Using an Employer of Record

Using an Employer of Record, that is, a legal entity that manages the hiring formalities and all administrative, fiscal, social security matters of the employment relationship (between the employer and employee) and exercises their organisational and disciplinary powers on the employee hired in Italy, on behalf of a foreign entity is prohibited under Italian law. This is due to a presumption of illicit labour intermediation as the formal employer and the substantial employer (the one who benefits from the work) is different.

A Social Security Representative can only be used to manage any administrative, social security, and tax issues of an employee hired in Italy by a foreign employer. A Professional Employment Organization (PEO) can be the official representative of the foreign employer even when there is no obligation to create a permanent establishment in Italy.

Hiring temporary staff through an agency is expressly permitted and regulated by law but specific regulations apply. The agency, through which the temporary employee is hired, must be established in Italy in accordance with specific formal and financial criteria (Article 4 to Article 7, Legislative Decree number 276/2003).

If the agency is established abroad, it must be authorised to operate in Italy within the scope of a transnational provision of services**,** for example, being able to send workers hired and managed from abroad as part of a service contract based in Italy.

Engaging an Independent Contractor or Consultant

Foreign companies can engage independent consultants but must consider the specific characteristics required under Italian law.

Work performed independently is defined by Italian law as a *contratto d'opera* (work performance contract) as the supply of work is rendered independently by the party under the contract, without a subordinate relationship being established between the contracted individual and the foreign company engaging their services (Article 2222, Italian Civil Code).

The performance contract envisaged under Article 2222 of the Italian Civil Code is distinguished from other types of independent work, for example, tender contract work, which can sometimes overlap.

There are similarities between the rules governing procurement contracts (Article 1655, Italian Civil Code) and work performance contracts for independent consultants (Article 2222, Italian Civil Code). The distinction assumes that work performance contracts are generally performed by self-employed workers, while procurement contracts require the organisation of people and the means to perform the work (by the employer) that goes beyond the simple provision of services by a self-employed worker (Supreme Court, Decision no 12519 (21 May 2010) and Supreme Court Decision no 24386 (3 November 2020)).

The provisions of Article 2229 of the Italian Civil Code must also be considered. These provisions relate to contracts for intellectual work provided under a work performance contract, in which the performance of the activity is conditioned by a registration with special professional bodies (including architects, engineers, and lawyers), lists, and registers.

There are also quasi-subordinate collaborations in which the performance of work takes place in coordination with the business entity which engaged the service.

The following requirements characterise these quasi-subordinate collaboration relationships:

- **Collaboration**: The collaboration between the individual and the company differs from to the subordinate relationship with an employer and the integration of workers in the company organisation that characterises subordinate employment.

- **Coordination**: There is a functional connection with the employer's organisational structure or with the aims pursued by an employer. The coordination between the employer and worker is important to achieve the agreed outcome.
- **Continuity**: Performance of the contracted work is expected to continue over an extended period of time and implies recurring, not occasional performance.
- **Personal nature**: Personal contribution of the worker.

The defining element of an employment relationship is the personal subjection of the worker to the executive, organisational, and disciplinary power of the employer (Supreme Court, Decision no 4500 (27 February 2007) and Supreme Court, Decision no 23520 (20 September 2019)). This occurs in any case where the workers autonomy is limited.

Other factors are also considered when defining an employment relationship as subordinate, including the employee's:

- Level of risk.
- Ongoing service.
- Continuous presence in the office with a dedicated desk.
- Observance of working hours.
- Form of remuneration paid at certain dates.

However, they are considered of secondary importance and not definitive on their own (Supreme Court, Decision no 21028 (28 September 2006), Supreme Court, Decision no 21194 (2 October 2020) and Tribunal of Rome Decision no 8604 (19 November 2023)). They become significant if considered, for example, in relation to an employment relationship with a highly skilled professional or intellectual content because in these cases the independent worker manages the issue with their intellectual efforts and competences without the support of a structural organisation.

There are no risks in bringing self-employed workers into a company if the way in which the employment relationship is managed corresponds to self-employment. For example, the self-employed worker retains organisational autonomy and risk, is not subject to time limits or to the managerial, organisational, and disciplinary power of the employer.

Pre-Employment Requirements

Registration as Employer

An employing permanent entity must:

- Create a Company Register at the local Chamber of Commerce (Note that this does not apply to a representative office).
- Chose a physical address in Italy.
- Appoint a legal representative for their business activities and for their new employees. The legal representative does not have to reside in Italy but must have an Italian tax code.
- Request a tax code from the local office of the Italian Revenue Agency (*Agenzia delle Entrate*). This identifies the legal business entity that will formally engage a worker.

- Register with the Italian National Social Security Institute (INPS) (either online, in person or through an authorised person (in the form of a Social Security Representative Person or Professional organisation)). The INPS provides social security and welfare benefits for workers who are entitled to them, including pensions and temporary benefits (illness, maternity, family allowances, severance pay fund, unemployment, mobility, social security for the unemployed (NASPI), and redundancy pay).
- Register with the Italian National Health and Safety Insurance Institute (INAIL). Registration with INAIL is also useful as it helps INAIL (and the employer) identify the correct form of employer contribution payments and fulfilment of the employer's social security and insurance obligations (that is, compulsory health and safety insurance for employees to cover accidents and occupational disease).
- Appoint a specific Social Security Representative in Italy, who will carry out all administrative, accounting, social security, and tax management obligations (required by law) of any workers hired in Italy. The Social Security Representative must:
    - ensure the timely payment of social security and tax contributions in accordance with their deadlines;
    - keep the Single Labour Register (*Libro Unico del Lavoro* (LUL) (a special register required by law to record the attendance and payroll of employees on a monthly basis (see *Obligations on Commencement of Employment*)) updated and draft all necessary documents relating to the employment relationship (including the Payroll Certification, F24 (see *Taxes on Employee's Salary*), Uniemens (the monthly declaration to INPS of the payment of the salary and the social security contribution); and
    - ensure the payment to the INPS of all employee contributions through the F24 forms (hence the need for an Italian bank account affiliated with or recognised by the Italian Revenue Agency). The foreign employer (or Social Security Representative) does not retain employee taxes from their income. It is the employee's responsibility to make their own tax declarations and payments in Italy (as the place they are hired, they reside, and carry out their work).

From 1st April 2010, all businesses (not including representative offices) can use the ComUnica service to complete all administrative obligations, including the company registration, social security, welfare and tax requirements and to obtain the tax code and VAT number (Article 9, Legislative Decree number 7/2007 and Prime Ministerial Decree 6 May 2009). Using ComUnica services simplifies the process, especially for start-up companies, when an organisation needs to register and hire workers simultaneously.

Registration of New Employees

As soon as an employer hires an employee, it must submit (online, in person, or through an appointed authorised person) a registration application form to INPS.

It is mandatory to provide specific identifying information, for example, a certified email address, a digital signature, an Italian Public Digital Identity System (SPID), and bank account details from which all of the employees' social security contributions will be paid.

Companies who hire employees after the company has already been established can use the Single Communication electronic registration procedure also available on the INPS website (INPS circ. number 2/2007 and number 172/2010) each time they hire an employee.

The application form is used to:

- Inform the INPS of the nature of the employer's business which is then used by the INPS to determine the employer's social security position and level of contributions to be made by the employer.
- Define the company's activities and allow the implementation of insurance and social security contribution relationships (INPS circular no. 28/ 2011).

Company registration is exclusively an administrative act which makes the obligatory contribution by the employer feasible. An insurance relationship between the employer and INPS arises when the employer hires personnel subject to one of the insurances managed by INPS. The insurance relationship begins pursuant to the employment relationship. Therefore, the insurance relationship arises independently of the formal completion and submission of the application for registration as it derives from the legal obligation of social insurance (Article 2115 and Article 2116 Italian Civil Code; INPS circ. n. 2/2007).

From the date of hiring, an employer is obliged to declare to the worker and to communicate to the Labour Authority (formerly the National Public Agency for Labour Policies (ANPAL)) (Article 13, Legislative Decree no. 150/2015).

Upon entering into an employment contract (through online credentials for access to the Compulsory Communication Form (*Comunicazione Obbligatoria* (COB) digital service), and before the employee commences work, the employer must communicate (using the *Unificato Lav* Form) that it has entered into such a contract to the Labour Authority in whose catchment area the workplace is located. This must be done no later than the day before the execution of the contract in question (Art. 9-bis of Law Decree no. 510/1996; Note of the Italian Ministry of Employment no. 4746/2007).

A copy of the communication to the Labour Authority carried out electronically using the *Unificato Lav* Form or a copy of the individual employment contract containing all the information required by the COB form must also be delivered to the worker before starting work (Article 9-bis, Law Decree no. 510/1996).

The COB form, which the individual employment contract also conforms to, must contain all information required by law to be provided to the worker at the time of establishing the employment relationship (Legislative Decree no. 152/1997; EU Directive no. 2009/152) (see *Employment Contracts*).

The COB form must include, among other things:

- The worker's personal data (for example, their full name, date of birth, and address).
- The date of hiring.
- The date of termination if the relationship is for a fixed term.
- The type of contract.
- The professional qualifications relevant to the duties to be performed.
- The economic and regulatory treatment (that is, salary and any applicable collective bargaining agreements (CBAs)).

Failure to comply with the specific communication requirements of the COB form may result in the following sanctions:

- Administrative fines ranging from EUR250 to EUR1,500 for each employee concerned (Article 19, Legislative Decree no. 276/2003) for failing to deliver to the employee a copy of the COB form establishing the employment relationship or for not providing the employee with their employment contract containing the information provided for in Legislative Decree no. 152/1997 before the start of their employment.

- Administrative fines ranging from EUR100 to EUR500 for each worker concerned for failing to adhere to employee recruitment communication obligations to the Labour Authority pursuant to the law.

The application of a further sanction (a maxi-sanction) could apply in relation to the employment of subordinate workers (not independent contractors) without fulfilling the communication obligations (set out above) established by law. Here the administrative pecuniary sanction would increase according to the number of days of employment of each worker in the event that the employer did not fulfil their legal obligations (Article 22, Legislative Decree no. 151/2015; Article 3, Law Decree no. 12/2002; Article 1, Law no 145/2018).

Employment and Labour Laws

In Italy, the employment relationship is largely regulated by:

- The Italian Civil Code, state law, decree laws, and delegated legislative decrees.
- The National Collective Work Agreement (*Contratto Collettivo Nazione di Lavoro*) (CCNL), which represents the regulatory source through which workers' trade union organisations and employers' associations jointly define the economic and regulatory rules governing the employment relationship.
- The individual employment contract entered into between an employer and their employee.
- The Italian Constitution has a fundamental role, as it recognises work as a founding value of the Italian Republic by:
    - guaranteeing and ensuring work in all of its forms and applications (Article 35);
    - protecting workers by providing entitlement to remuneration for their work and to rest and leave (Article 36); and
    - establishing a social security system for those unable to work (Article 38).

These rights are also provided through the CBAs as the formal recognition of collective autonomy (Article 39 of the Italian Constitution) has not been approved yet.

Italian Labour Law defines the employer as the business entity which employs people to perform work on its behalf in return for a salary. The employee is the person who is engaged to work for the enterprise, for a wage, providing intellectual or manual work in the employment of and according to the instructions provided by the employer (Article 2094, Italian Civil Code).

Types of Employees

An employee is someone who undertakes, to work in an enterprise for payment, providing intellectual or manual services, and who is employed by and receives instruction from the employer (Article 2094, Italian Civil Code). In Italy employment on a full-time, open-ended contract is the usual form of employment relationship (Article 1, Legislative Decree no. 81/2015).

There are four categories of workers, executives, middle management, clerical staff, and manual labourers (Article 2095, Italian Civil Code). The duties of the worker are the activities effectively performed by them and represent the subject matter of the work, and are also linked to the status of a worker in the organisation in terms of level and professional class (by category of worker) and the economic and (minimum) legal rights envisaged under CCNL (Article 2103, Italian Civil Code).

Employers can directly hire all workers for any type of employment relationship (Article 4-bis, Legislative Decree no. 181/2000). Special rules are envisaged for the hiring of non-EU workers, disabled workers, and some special categories such as in the tourism and public sector sectors, or for the performance of occasional ancillary services.

Compared with the traditional model of the full-time, open-ended employment contract, Italian labour law provides for alternative forms of employment contracts, characterised by greater flexibility aimed at facilitating entry into the labour market.

This flexibility is achieved by introducing variables into the traditional model, for example:

- Part-time working hours.
- Fixed-term contracts.
- The supply of staff (staff-leasing).
- Apprenticeship contracts.
- Intermittent employment contracts.

A part-time employment contract (which may be for a fixed term or open-ended) is characterised by shorter working hours than those of a full-time, open-ended employment contract, as established under law or collective labour agreements (Article 4-12, Legislative Decree no. 81 of 25 June 2015). The main feature of this type of contract is shorter working hours compared to the usual working hours established by law for full-time contracts or reduced working hours pursuant to any national, local, or company CBAs. Usual working hours, as established by law is 40 hours a week (Article 3(1), Legislative Decree no. 66/2003)

In the case of fixed-term contracts**,** Italian law states that a term may be applied to an employment contract for no longer than 24 months (even in case of the renewal of a previous fixed-term contract between the same parties and for the same duties) and only in case of specific reasons also established by relevant CBAs (Article 19 to Article 29, Legislative Decree no. 81 of 25 June 2015). Contracts for fixed-term work by executives are excluded from this as they may not have a duration of more than five years, subject to the executive employee's right to express their intention to withdraw from the employment contract under Article 2118 Italian Civil Code once three years have passed (Article 29, Legislative Decree no. 81/2015).

A labour supply agreement (staff-leasing) is characterised by a triangular relationship involving three distinct entities (the worker, the employment agency, and the company which engages the worker). In this instance there are two separate contractual relationships, one regulating the relationship between worker and the agency, and the other, of a commercial nature, between the agency and the company engaging the worker. The employment contract between the employment agency and the worker can be either fixed-term or open-ended, and any type of contract can be used, including part-time and apprenticeship contracts (Article 30 to Article 40, Legislative Decree no. 81/2015). This type of contract falls outside the focus of this Practice Note as it is the employment agency that directly hires the worker.

An apprenticeship contract is defined by law as an open-ended contract aimed at the training and employment of young people (Article 41 to Article 47, Legislative Decree no. 81/2015). The law provides for three different forms of apprenticeship:

- Apprenticeship for obtaining a qualification and a professional diploma.
- Professional apprenticeships.
- Higher education and research apprenticeships.

An intermittent employment contract is a contract under which a worker is at the disposal of an employer for the performance of work of a discontinuous or intermittent nature, according to the needs identified by CBAs, subject to a maximum of 400 days

which does not apply to activities to be carried out in specific sectors such as tourism, shops, and entertainment. The contract may also be stipulated for a fixed term. An intermittent contract can be entered into by those employees over 55 years of age and 24 years of age or younger.

Recruitment

The hiring of an employee is normally preceded by a personnel search and selection phase. The employer can carry out this activity directly or turn to third parties such as employment agencies or other entities that are part of its network for active employment search services.

Before hiring, some rules must be respected regarding:

- The right of precedence of some workers to be hired before others. For example, subjects already hired under fixed-term contracts have priority in the event of new permanent hirings being made within 12 months of their start date, provided that the planned hiring involves the same tasks. Priority will also be given to workers hired on a part-time basis before hiring other workers with full-time employment contracts.
- The principle of non-discrimination and compliance with the rules that provide for the inclusion of certain percentages of disabled workers in the company on the basis of, and within the limits of Law no. 68/1999.
- Privacy and data protection, also in the pre-contractual phase (EU Regulation no. 679/2016 (GDPR)) (see *Data Protection*).
- Pre-contractual negotiations (see *Offer Letters*).
- Pre-employment medical examinations are lawful within the framework of the regulations on health and safety at work and the environment. Therefore, medical examinations may be made within the framework and within the limits of the health surveillance obligations established and regulated by the special legislation (Article 41, Legislative Decree no. 81/2008).

Background checks

There are no specific preliminary requirements regarding background checks (such as drug testing or criminal records) before hiring in Italy. In fact, pre-employment investigations, such as drug testing, are prohibited.

Criminal background checks on a candidate are mandatory only for those workers who will be responsible for minors, in which case the company will request a certificate confirming that the candidate has no criminal record. It is the responsibility of the worker being hired to request this check from the competent authorities and deliver to the employer at the time of hiring (Article 25bis, Presidential Decree no.313/2002).

Generally, when a company decides to expand its workforce, it acquires the candidate's curriculum vitae or engages the services of an agency specialising in matching job supply and demand.

Italian law, in implementing European Union legislation, provides for the general prohibition of discrimination in hiring (Article 15, Law no. 300/1970).

In practice, a potential candidate for a job position can be subject to a professional test of their skills to show they are qualified for a role. The tests in the pre-hiring phase must be in line with the legal requirements of Article 8, Law no. 300/1970.

The employer is prohibited, for the purposes of hiring, as well as throughout the employment relationship, from carrying out investigations, data-processing, or pre-selection searches (including through third parties) that involves:

- An individual's political, personal, religious opinions.
- An individual's trade union opinions.
- An individual's ethnic origin.
- Any disputes with previous employers.
- Facts which are not relevant for the purposes of the evaluation of the worker's professional aptitude.

(Article 8, Law no. 300/1970.)

These prohibitions apply to employment agencies and other authorised and accredited public and private entities (even with consent), unless they affect the way the work activity is carried out or is an essential and decisive requirement for the purposes of carrying out the work activity (Article 10, Legislative Decree no. 276/2003).

Offer Letters

There is no legal requirement to provide employees with an offer letter. However, the pre-contractual phase may end with the signing of the Letter of Employment Commitment (*Lettera di impegno*) which contains the essential elements of the contract, and which is binding on the parties.

If it is proven that negotiations have taken place between the parties to objectively justify the conclusion of the contract, a failure to hire may result in the right to compensation for damages following the establishment of pre-contractual liability by the employer for violation of the criteria of correctness and good faith in pre-contractual relations (Article 1337, Italian Civil Code).

Italian case law requires that the party which has, without just reason, withdrawn from their contractual responsibilities must pay the other party damages as they have not fulfilled their obligations and in doing so may have led the other party to incur expenses or to give up more favourable opportunities (Supreme Court, Decision no. 1051, 01/25/2012).

Employment Contracts

The employment relationship implies, in legal terms, a contract with corresponding performances characterised by the subordination of the employee, that is, the employee is subject to the managerial and organisational authority of the employer. The employee is obliged to be:

- Diligent and to follow instructions (Article 2104, Italian Civil Code).
- Loyal and not to engage in competitive practices (Article 2105, Italian Civil Code).

Italian law does not provide for a specific template for employment contracts or have specific language requirements. In theory the employment contract can be concluded orally or demonstrated by conclusive deeds (that is, the conduct of the parties) considering the principle of freedom of form.

However, the written form of employment contract is required by law for some types of employment relationships. For example, a fixed-term contract must be in writing to document the term of the contract. In the absence of a written contract, the employment relationship is considered permanent.

Part-time contracts must also be in writing to evidence the agreement between the parties on the reduction of working hours.

The most important reform of recent years in the field of Italian employment and labour law is the introduction of the obligation to inform employees at the time of their hiring about all the economic and legal conditions which regulate the employment relationship. This has been due to the implementation of EU Directive 2019/1152 in Italy. In Italy it is provided by Legislative Decree no. 152/1997 (as integrated by Legislative Decree no. 104/2022, called the Transparency Decree) and effective (as amended) from 5th May 2023.

The information that must be provided, includes:

- The identity of the parties (Article 1a, Legislative Decree no. 152/1997).
- The location of the workplace including any information on any additional locations the worker can carry out their duties and whether they are free to determine their own workplace (Article 1b, Legislative Decree no. 152/1997).
- The headquarters or domicile of the employer (Article 1c, Legislative Decree no. 152/1997).
- The classification, level, and duties attributed to the worker or, alternatively, the characteristics or summary description of the job (Article 1d, Legislative Decree no. 152/1997).
- The start date of the employment relationship (Article 1e, Legislative Decree no. 152/1997).
- The type of employment relationship and in the case of fixed-term relationships the expected duration of the contract must be indicated (Article 1f, Legislative Decree no. 152/1997).
- The name of the agency must be identified for workers hired through a staffing agency (Article 1g, Legislative Decree no. 152/1997).
- The duration of the probationary period, if applicable. The duration limits for probation periods are established by law pursuant to Article 7 of Legislative Decree No. 104/2022) and CBAs (Article 1h, Legislative Decree no. 152/1997).
- The right of the worker to receive training provided by the employer, if applicable (without prejudice to the mandatory training provided for in apprenticeship contracts) (Article 1i, Legislative Decree no. 152/1997).
- The duration of holiday leave, as well as any other paid leave to which the worker is entitled (Article 1***l***, Legislative Decree no. 152/1997).
- The procedure, form, and terms of notice in the event of termination from the contract by either the employer or the worker (Article 1m, Legislative Decree no. 152/1997).
- The initial amount of the salary or remuneration, including its related elements (for example, bonuses or specific allowances (including, cash allowance and travel allowance)), with an indication of the period and methods of payment (Article 1n, Legislative Decree no. 152/1997).
- The usual scheduled working hours and any conditions relating to overtime work and its remuneration including any conditions in relation to changes of times and days of shift work and whether the employment contract provides for predictable working hours (Article 1***o***, Legislative Decree no. 152/1997).

- If the employment relationship, is characterised by largely or entirely unpredictable organisational methods and does not provide for scheduled working hours, the employer must inform the worker about:
    - the variability of work scheduling, the minimum amount of guaranteed paid hours and the remuneration for work performed in addition to the guaranteed hours;
    - the hours and days in which the worker is required to carry out work tasks; and
    - the minimum notice period to which the worker is entitled to before the start of the work performance and, where this is permitted by the type of contract in use and has been agreed, the deadline within which the employer can cancel the employment relationship (for example, before the commencement of intermittent work).

      (Article 1p, Legislative Decree no. 152/1997.)

- The CBA, also at the corporate level, applied to the employment relationship, signed by the relevant parties (Article 1q, Legislative Decree no. 152/1997).
- The bodies and institutions that receive the social security and insurance contributions due from the employer and any form of additional social security protection provided by the employer, including health insurance and pensions (Article 1r, Legislative Decree no. 152/1997).
- The methods of carrying out employee services and duties relevant to the role including the use of fully automated decision-making or monitoring systems and the criteria on which these are based (Article 1s, Legislative Decree no. 152/1997).
- This information must be delivered to the employee in the individual employment contract or by providing a copy of the COB form for the establishment of the employment relationship transmitted pursuant to Article 9-bis of Legislative Decree no. 510/1996 (see *Registration of New Employees*).

The obligation to provide information on working conditions must be fulfilled:

- At the time of the establishment of the employment relationship (at the latest the day before the agreed start date) if contained in the employment contract or in the communication establishing the employment relationship, by delivery of the indicated documents in paper or electronic format.
- Within seven days from the start of employment if not contained in the employment contract or in the communication establishing the employment relationship.
- Within one month from the start of employment (those contained Article 1g, i, l, m, q, and r of Legislative Decree no. 152/1997(namely, relating to staff leasing agency; training; holidays; notice period; CBA; insurances, respectively).

However, some of the information, namely that provided for in Article 1 h, i, l, m, n, o, and r of Legislative Decree no. 152/1997, can be provided by the employer simply indicating the regulatory reference or the collective agreement to the employee.

If the employment relationship ends before the end of the month and the information has not yet been provided, a written declaration containing all the necessary information must be provided at the time of termination of the employment relationship.

In the Italian legal system, any CBAs also play a fundamental role in determining the content of the contract. CBAs legally regulate the employment relationship and can generally not be departed from by the individual employment contract if this provides worse conditions for the worker.

Collective bargaining is made at three different levels:

- Between trade union confederations.
- National or industry sector related.
- Decentralized (at the company or territorial level).

CBAs are considered common law contracts effectively limited to members, since organisations and trade unions are not registered bodies due to the non-implementation of Article 39 of the Italian Constitution. They are solely effective for the members of the trade unions which have signed up to the agreement itself, while those workers who are not members of a trade union remain outside its scope.

However, case law has extended the application of CBAs due to their tendency to express a general framework for all workers operating in each sector.

The position of employers regarding their local association of employers stipulating the CBA in their industry sector is decisive. A company may, in fact, decide not to join an association of employers participating in the drafting of a CBA, to avoid the application of any greater regulatory or economic burdens. They may decide instead to regulate employment relationships from the start solely based on law and individual employment contracts.

However, the application of the rules of CBAs only to workers who belong to a trade union, may seriously weaken the protective function of CBAs. In fact, CBAs are widely used in the daily management of labour relations thanks to the developments both in case law and legislation.

In the context of the relationship between an individual employment contract and a CBA contract, there are two approaches to determine the sources of regulation of the employment relationship:

- The clause of the individual contract is different and worse than the collective one. In this case the individual clause would be voided and replaced by the collective one.
- The individual clause is different to the collective one but an improvement. In this case the individual clause prevails.

  (Article 2077, Italian Civil Code)

Legislation in turn entrusts the adjustment of the procedural and substantive aspects of the employment relationship to collective bargaining.

Obligations on Commencement of Employment

In the context of personnel administration, the company or employer (among others relevant documents) must have the following mandatory documents:

- Documents relating to personnel (for example, the LUL and Accident Register. See *Registration as Employer*).
- Documents revealing the names of executives and their roles.
- Documents relating to risk analysis, assessment, and management.
- Documents relating to health and safety supervision.

- Health, safety, and environmental management system documents.

The LUL is of particular importance and is an employee register containing:

- The personal details of workers.
- Their position and level.
- Basic pay.
- Length of service.
- Insurance and pension positions.
- All payments made or managed by the employer.
- Employee attendance records.

The LUL must be a single register, even if the employer holds several social security and insurance accounts (Law Decree no. 112 of 25 June 2008, Article 39 and Article 40, Ministerial Decree of 9 July 2008).

The LUL must be set up no later than the last day of the month following INPS registration of the company.

There is also a mandatory medical examination at the beginning of the employment relationship for workers who are exposed to:

- Chemical agents that may be dangerous to their health.
- Risks associated with moving heavy loads, such as back injuries.
- Equipment which uses video terminals (including computer screens).
- Carcinogens or biological agents.
- Asbestos.
- X-rays, radioactive substances, artificial optical radiation, infrared, or ultraviolet radiation.
- Particular noise levels.
- Vibrations.

Medical Examinations

The medical examination is also mandatory when the employee:

- Has any job role changes within the company.
- Returns to work after an absence lasting more than sixty days due to illness.
- Was exposed to chemical risk and the employment relationship was terminated.

The doctor who carries out the worker's medical examination may carry out clinical or diagnostic tests or even a specialist examination depending on the type of activities or industry the company operates in (for example, chemical or pharmaceutical). These examinations must be carried out before an employee begins the tasks which they were employed to carry out. The doctor is also required to monitor workers by carrying out periodic health checks.

Administrative sanctions and fines are provided by law for all the obligations indicated above if they are not carried out as required by law.

Pay

The Italian Constitution provides that a worker is entitled to remuneration commensurate with the quantity and quality of their work and in any case sufficient to ensure them and their family a free and dignified life (Article 36, Italian Constitution).

The remuneration envisaged under CBAs is equitable because it is in line with the constitutional requirement of sufficient remuneration and is established on a national level (Italian Supreme Court no. 5394 3 September 1986; Italian Supreme Court no. 5139 of 9 March 2005). Minimum remuneration does not include other payments agreed to by the parties or pursuant to any CBAs, for example additional remuneration or a bonus (Supreme Court no. 5598 of 15 March 2005).

The forms of remuneration recognised under Italian law, CCNL, and common practice, are:

- Remuneration determined according to the per piece rate and must be paid to the extent determined by the corporate rules, with the terms and procedures used in the place where the work is performed (Article 2099, Italian Civil Code). The per piece rate is measured upon the results of work (and not time) and is regulated by CCNL or agreement between the parties.

  Remuneration determined on the per piece rate is rarely used. This form of remuneration is prohibited for apprenticeship contracts (Article 2131, Italian Civil Code; Article 42, Legislative Decree no.81/2015).

- Remuneration determined based on the duration of the work performed, for example, per hour, week, month, or year. It is regulated for each sector by CCNL. This is the most common form of remuneration. The worker is paid for the hours of work performed and for making their human resources available.

- Remuneration, entirely or in part, in the form of profit or product sharing (Article 2099, Italian Civil Code), even though the worker may not be exposed to business risk. If contractual regulations or conventions do not state otherwise, the amount of sharing of the profits owed to the employee is determined based on the net profits of the business (Article 2102, Italian Civil Code).

- Remuneration entirely or in part with payment in kind (Article 2099, Italian Civil Code). This type of remuneration is complementary to traditional payment options and may consist, for example, of accommodation provided to a security guard, the provision of heating, electricity, water, the provision of clothing, and so on, or discounts on the purchase of goods produced by the employer, or the provision of goods or services for free.

- Fringe benefits are included among the forms of remuneration in kind. The assignment of fringe benefits falls within the wider concept of incentives (for example, company car, granting of mortgages at favourable rates, housing, membership of sports or recreational clubs, assignment of mobile phones, PCs and tablets, credit cards, and so on).

- Remuneration based on commission and is calculated on the basis of the business dealt with or concluded by the worker (sometimes, reference is only made to successful dealings). This system of remuneration is widespread mainly in the commercial sector.

The Italian Constitution establishes the equal social dignity and ban on discrimination, with work being equal, based on gender and age (Article 3 and Article 37, Italian Constitution). Differences in remuneration in this instance can only be justified if a different working activity is performed.

The principle of equal pay for equal work in the same enterprise does not exist in the Italian legal system. This means that workers who perform the same duties may be paid a different wage, while respecting the equitable wage and the minimum wage guaranteed as also set out in the Constitution and the Workers' Statute (Article 36, Italian Constitution; Article 16, Law no. 300/1970).

Italian law states that workers' wages or compensation must be paid exclusively by traceable means (such as bank account payments) and not in cash (Law no. 205/2017). Employers are required to keep the documentation certifying such payment of workers' wages.

It is common practice for wage payments to be made monthly, but this can vary based on the provisions of CBAs or individual contracts.

The bonus thirteenth month of salary was introduced for the first time in Italian law in 1937 with the renewal of the CCNL for industrial employees and became mandatory for all subordinate workers (employees and not independent contractors) in 1960 with the Presidential Decree no. 1070/60. This deferred monthly payment must be paid to all employees without making any distinctions between open ended, fixed-term, full-time, or part-time contract workers. Many consider the thirteenth month salary payment an annual bonus.

There are also employers who pay a fourteenth month salary to their workers, but this is not mandatory. This fourteenth monthly payment is usually the result of a trade union agreement or is provided for in a special collective agreement.

From a legal perspective at the national level, remote workers tend to fall outside the scope of any thirteenth- or fourteenth-month payment but may receive them if they are covered by an individual or collective labour agreement.

Employers must give their employees a payslip (hard copy or electronic form), indicating:

- The name and professional status of the worker.
- The period to which the remuneration refers.
- Payments that constitute remuneration.
- Information on the individual deductions made.

(Law no. 4, 5 January 1953).

The fact that a worker may have signed the payslip by way of receipt does not necessarily mean that payment of the salary has been made.

In connection with the payment of the remuneration, the employer must also fill in the LUL with all the data relating to their workers, for each month of reference, by the end of the following month (Article 40, Decree Law no. 201/2011) (see *Obligations on Commencement of Employment*).

Tax, Social Security and Other Contributions

Employers in Italy have important legal responsibilities towards their employees in relation to the tax, social security, and insurance obligations.

Taxes on Employee's Salary

Employers with workers in Italy are obliged to withhold employee income taxes (Article 23 et seq. of Presidential Decree no. 600/1973). The withholding agent (the employer) must also pay the withheld tax deducted from employees' wages to the Italian Revenue Agency using an F24 form (see *Registration as Employer*).

Taxes withheld at source by the employer on employee income are an advance partial payment of Income Tax Owed by a Person (IRPEF). The withholding agent must withhold tax by way of a partial payment on the sum (wages, salary, benefits, and so on) and values paid in each remuneration period. The taxpayer (the employee) must subsequently specify income received in their income statement, calculate the amount of overall tax due using the self-taxation system, and then deduct the withholding tax already paid by way of the partial advance payment.

Every year (or within the 12 days following termination of employment, if requested by the worker, the withholding agent issues the employee with a Single Certification Form regarding income from employment, income from self-employment, and other income paid.

Social Security and Other Contributions

The Italian legal system also provides for obligatory insurance against accidents at work and occupational diseases, managed by INAIL. This is paid entirely by the employer and calculated on a yearly basis, for all employees of the company (see *Registration as Employer*).

In Italy, obligatory social security contributions aimed at employees are managed by the INPS (see *Registration as Employer*). Registration with the INPS provides social security and welfare benefits for workers who are entitled to them, including pensions and temporary benefits (illness, maternity, family allowances, severance pay fund, unemployment, mobility, social security for the unemployed (NASPI), and redundancy pay). The calculation of all contributions owed, the deductions (made on the worker's income, when due) and subsequent payments to INPS using the F24 form are the responsibility of the employer. Contributions are calculated on the taxable income for the purposes of social security.

The obligation to pay social security contributions arises when there the obligation to pay remuneration for the working activity performed by the worker begins pursuant to the law and employment contract. This is the case even if the remuneration is not effectively paid. The deadline for the social security contributions payment is the 16th day of the month when the payment falls due.

Other Benefits

CBAs also provide supplementary forms of medical care and pensions (for each industry sector) with contributions paid by both the employer and the employee and with different rules and regulations for each CBA.

Additional forms of supplementary medical assistance may also be provided at company level.

Recording Time

Italian law establishes that normal working hours are fixed at 40 hours per week and that collective labour agreements may, for contractual purposes, establish shorter working hours and express normal working hours as an average, based on a period not exceeding one year (Article 3, Legislative Decree no. 66/2003).

With the entry into force of Legislative Decree no. 66/2003, the daily limit of eight hours previously required by law has ceased to apply. The distribution of working hours can therefore exceed eight hours per day, provided that over the course of the week the working hours do not (on average) exceed 40 hours.

Overtime work is defined as work exceeding the average of 40 hours per week or exceeding any lower weekly working hours established by collective agreements, but within the maximum limit of 48 hours per week, always calculated as an average (generally over a period of four months or as provided for in a CBA) (Article 1, paragraph 2(c), Legislative Decree no. 66/2003, Article 4, Legislative Decree n. 66/2003).

For health and safety purposes employers should keep records of an employee's presence at work, not just their daily working hours (Legislative Decree no. 81/2008). The aim of this is also to ensure that employees do not exceed the limits provided by the law. This can be achieved through the use of an electronic badge or fob however data cannot be gathered in relation to the performance of their duties as this is prohibited by law as a form of direct remote control of the employees (Article 4, Law no. 300/1970) (see *Data Protection*).

Penalties for infringements of working time rules are administrative and vary with the type of offence, the number of workers involved, and the reference period (assessing the duration of the infringements and the number of times the infringements have occurred).

Training

Italian law specifies that employers must provide adequate training on health and safety in the workplace to all workers (Article 37, Legislative Decree no 81/2008).

This training must cover:

- Concepts of risk, damage, prevention, and protection.
- Company risk assessment.
- Rights and duties of the various company sectors.
- Supervisory, control, and assistance bodies.
- Risks relating to work tasks and possible damages and consequences, prevention and protection measures, and procedures characteristic of the sector or sector to which the company belongs.

Furthermore, for all sectors, Italian legislation requires training on health and safety, and refresher courses, for all workers hired, when an employee changes roles in the company, and when there is the introduction of new equipment or working methods.

Data Protection

The protection of personal data falls within the scope of the protection of the GDPR making it mandatory for the employer to provide to any potential candidate and their employees with complete information about the processing of their personal data (Article 13, GDPR), also on the adoption of fully automated decision-making and monitoring systems (Article 1, Legislative Decree no. 152/1997), and internal data protection systems through the adoption of IT Rules and Regulations and Privacy Policy.

The processing of personal data in the employment relationship must adhere to the principles of lawfulness and transparency that derive directly from the employment contractual relationship.

In Italy it is forbidden for the employer, both for the purposes of hiring and during the course of the employment relationship, to carry out investigations and collect data (even through third parties) on the political, religious, trade union opinions of employees, or any facts which are not relevant for the purposes of evaluating their professional aptitude (Article 8, Law no. 300/1970; Article 113, Legislative Decree no. 196/2003).

Ongoing Compliance

Employers are generally not required to provide employees with any further documents on an ongoing basis during the employees' employment unless there are changes to the employee's employment terms.

If any elements of the employment contract are modified, the changes must be communicated to the worker within a day of them taking effect (Article 3, Legislative Decree no. 152/1997).

In addition, the law identifies several instances throughout the employment relationship where information or trade union consultation is required, for example:

- Use of fixed-term contracts (Article 23, Legislative Decree no. 81/2015)
- Use of staff-leasing (Article 36, Legislative Decree no. 81/2015)
- Transfer of the employee who is a trade union representative (Article 22, Law no. 300/1970)
- Transfer of business (Article 47, Law no. 428/1990)
- Collective dismissal (Article 4 and Article 24, Law no. 223/1992)
- Relocation procedures (Article 1, paragraph 224, Law no 234/2021)
- Installation of video cameras (as an alternative to the administrative procedure) (Article 4, Law no. 300/1970)
- Detailed information on automated systems (Article 1bis, Legislative Decree no. 152/1997).

Violation of statutory procedures may lead to conviction by the courts for anti-union conduct.

Post-Employment Requirements

Within five days of termination of the employment relationship, the employer must communicate the termination of the employment relationship to the Labour Authority using the COB form in whose catchment area the workplace is located (Article 9-bis, Law Decree no. 510/1996; Labour Authority Note no. 4746/2007).

The communication of termination of the employment relationship is useful for the purposes of fulfilling the communication obligations to all bodies involved, including the Labour Authority, INPS, and INAIL.

On termination of the employment relationship, the payments due to the employee must be calculated and paid within 30 days from the last day of work (including the notice period).

The year after the termination of employment, the employer, as withholding agent**,** must issue the employee with a Single Certification Form regarding income from the employment contract and all the other payments made (see *Taxes on Employee's Salary*).

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